

ST 97-38

Tax Type: SALES TAX

Issue: Graphic Arts Exemption

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	
	)	NO.
	)	IBT
v.	)	NTL
	)	
TAXPAYER,	)	Administrative Law Judge
	)	Daniel D. Mangiamele
Taxpayer	)	

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RECOMMENDATION FOR DISPOSITION

Appearances:

Kenneth Ditzkowsky, for TAXPAYER; John Alshuler, Special Assistant Attorney General, for the Illinois Department of Revenue.

Synopsis:

This matter comes on for hearing pursuant to the taxpayer's timely protest of Notice of Liability XXXXX issued by the Department on October 15, 1993, for use tax covering the period July 1, 1990 to December 31, 1992. The taxpayer is an Illinois corporation engaged in the business of printing. The issue involved is whether film transferred by taxpayer to their customer qualifies for exemption. Following the submission of all evidence and a review of the record, it is recommended that the issues be resolved in favor of the Department.

**Finding of Facts:**

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the correction of returns, showing a total liability due and owing in the amount of \$77,141.00 and the revised audit reducing the tax liability to \$20,250.00 plus penalty and interest. Dept. Group Ex. No. 1 and 2

2. London Litho supplied film to taxpayer. Tr. p. 10

3. The film was used in the production of lithographic plates. Tr. pp. 10-11

4. The film in question was used to make plates. Tr. pp. 15-16

5. The plates are a medium to transfer an image to paper. Tr. pp. 15-16

6. Taxpayer did not pay tax on the film used for newspapers and magazines. Tr. p. 13

**Conclusions of Law:**

The issue raised questioned whether film purchased by taxpayer and used in taxpayer's prepress operation to make lithographic plates which ultimately transferred images to newspapers and magazines should be exempt. Taxpayer argued that they should be entitled to the exemption either under the graphic arts machinery and equipment exemption, manufacturing machinery and equipment exemption or that

they are entitled to the exemption under the theory that the film conveys news.

The graphic arts machinery and equipment exemption 86 Illinois Administrative Code Section 130.325 (b) (1) and (2) provides in part as follows:

1. Graphic arts production means printing by one or more of the common processes or graphic arts production services as those processes and service are defined in Major Group 27 of the U.S. Standard Industrial Classification Manual. (Section 2-30 of the Act) The exemption includes printing by letterpress, lithography, gravure, screen, engraving and flexography and includes such printing trade services as typesetting, negative production, plate production, bookbinding, finishing, looseleaf binder production and other services set forth in Major Group 27. The exemption extends only to machinery and equipment used in the act of production. Accordingly, no other type or kind of tangible personal property will qualify for the exemption, even though it may be used primarily in the graphic arts business.

2. Machinery means major mechanical machines or major components of such machines contributing to graphic arts production. Equipment means any independent device or tool separate from any machinery but essential to the graphic arts production process; or any sub-unit or assembly comprising a component of any machinery or auxiliary, adjunct or attachment or parts of machinery. The exemption does not include hand tools, supplies, lubricants, adhesives or solvents, ink, chemicals, dyes, acids or solutions, fuels, electricity, steam or water, items of personal apparel such as gloves, shoes, glasses, goggles, coveralls, aprons, and masks, or such items as negatives, one-time use printing plates as opposed to multiple use cylinders or lithographic plates, dies, etc. which are expendable supplies. This exemption does not include the sale of materials to a purchaser who manufactures such materials into an otherwise exempted type of graphic arts machinery or equipment.

The above section states the exemption does not include certain items listed above. Paragraph two quoted above specifically states:

The exemption does not include hand tools, supplies ... negatives ... which are expendable supplies.

The film closely resembles negatives and is an expendable supply. Film is a material used in manufacturing a plate, but it is not the plate which might by itself qualify for the exemption. The taxpayer has not therefore established through evidence that their film qualifies under the graphic art exemption as machinery or equipment.

Language in Chicago Tribune Company v. J. Thomas Johnson, Director of Revenue, 106 Ill. 2d. 63, 477 N.E. 2d 482 (1985), indicates that graphic arts machinery and equipment was not included in the original manufacturing machinery and equipment exemption. Based on the fact that the legislature enacted a machinery and equipment exemption for graphic arts production, I find, that if the film is to be exempt it is to be exempt under the graphic arts exemption and not the manufacturing machinery and equipment exemption. I have indicated above that this film does not qualify under graphic arts machinery and equipment exemption.

Lastly, the film does not qualify for the newspaper and ink exemption since its purpose is not to convey news but produce a lithographic plate. 35 ILCS 105/2 in part states as follows:

The purchase, employment and transfer of such tangible personal property as newsprint and ink for the primary purpose of conveying news (with or without other information) is not a purchase, use or sale of tangible personal property.

Film and similarly film used to make a plate is not used as newsprint or ink to convey news. The film does not go to the general public. The exemption is limited to newsprint. Film is not newsprint and is not analogous to newsprint in that it does not convey news to

the general public. See Chicago Tribune Company v. J. Thomas Johnson, Director of Revenue, 106 Ill. 2d 63, 477 N.E. 2d 482 (1985).

Based on all the evidence and testimony I therefore recommend that the revised assessment be finalized as to this taxpayer plus penalties and interest to date.

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Daniel D. Mangiamele  
Administrative Law Judge